

**SUMMARY REPORT OF INVESTIGATION<sup>1</sup>****I. EXECUTIVE SUMMARY**

Date of Incident:	July 21, 2016
Time of Incident:	8:13 p.m.
Location of Incident:	XXXX S. Calumet Avenue
Date of COPA Notification:	July 21, 2016
Time of COPA Notification:	8:15 p.m.

On July 21, 2016, at approximately 8:13 p.m., Officer A, #XXXXXX, Beat #XXXX, Officer B, #XXXXXX, Beat XXXX, and Officer C, #XXXXXX, Beat XXXX, were on bicycle patrol and assigned to XXXXXXXXX<sup>2</sup> for a concert. The concert was cancelled due to an approaching storm and the officers were returning to the XXX District Station. The officers were riding westbound on 18<sup>th</sup> Street when they were flagged down by two female subjects (later identified as Civilian 1 and Civilian 2) near the corner of 18<sup>th</sup> Street and XXXXXX Avenue. The females told the officers that there was a male subject (later identified as Subject 1), in the park<sup>3</sup> drinking beer and acting strangely.

The three officers rode back to the park where they observed Subject 1 sitting on a park bench drinking beer and talking on a cell phone. The officers asked Subject 1 to put the cell phone down so they could speak to him, at which time Subject 1 produced a handgun. Subject 1 stood up and pointed the firearm at the officers, moving it back and forth in a sweeping motion. The officers ordered Subject 1 to drop the handgun, Subject 1 then aimed and discharged one round striking Officer B in the left thigh. All three officers discharged their firearms multiple times towards Subject 1. Subject 1 then ran a short distance and climbed over a wrought iron fence. Officer A climbed the fence and observed Subject 1 holding the gun and attempting to get up. Officer A discharged his weapon once towards Subject 1 and then kicked the firearm away from Subject 1's body. Subject 1 remained in that location until an ambulance arrived. The involved officers then handcuffed Subject 1's right hand to a belt buckle due to Subject 1's left arm being injured from gunfire. Subject 1's handgun was recovered at the scene and located where he fell to the ground. Officer B sustained one gunshot wound to the left thigh. Officer B was provided aid by the other officers and transported to XXXXXX Hospital in a CPD vehicle<sup>4</sup>. Subject 1 was transported to

<sup>1</sup> On September 15, 2017, the Civilian Office of Police Accountability (COPA) replaced the Independent Police Review Authority (IPRA) as the civilian oversight agency of the Chicago Police Department. Therefore, this investigation, which began under IPRA, was transferred to COPA on September 15, 2017, and the recommendation(s) set forth herein are the recommendation(s) of COPA.

<sup>2</sup> XXXX S XXXXXXXXX Drive, Chicago IL 60605

<sup>3</sup> XXXXX Park, XXXX S Calumet Avenue

<sup>4</sup> Beat XXXX

XXXXXXX Hospital by ambulance where he was pronounced dead. The ensuing investigation by COPA shows that the use of deadly force by the involved officers was **Within Policy**.

## INVOLVED PARTIES

Involved Officer #1:	Officer A, star #XXXXXX, employee ID #XXXXXX, DOA: XXXXXXXX, Police Officer, Unit XXXX, DOB: XXXXXXXX, Male, White-Hispanic
Involved Officer #2:	Officer B, star #XXXXXX, employee ID #XXXXXX, DOA: XXXXXXXX, Police Officer, Unit XXX, DOB: XXXXXXXX, Male, White-Hispanic
Involved Officer #3	Officer C, star #XXXXXX, employee ID #XXXXXX, DOA: XXXXXXXX, Police Officer, Unit XXX, DOB: XXXXXXXX, Male, White-Hispanic
Subject #1:	Subject 1, DOB: XXXXXXXX, Male, Black

## II. APPLICABLE RULES AND LAWS

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### General Orders

1. Chicago Police Department General Order, GO 03-02-02; Force Options (IV-C-3-a)<sup>5</sup>
  2. Chicago Police Department General Order, GO 03-02-03; Deadly Force (II-A)<sup>6</sup>
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### Federal Laws

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1. Fourth Amendment to the United States Constitution
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### State Laws

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1. Illinois Compiled Statutes 720 ILCS 5/7-5 (Use of force; Exoneration)
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<sup>5</sup> Effective January 1, 2016

<sup>6</sup> Effective February 10, 2015

### III. INVESTIGATION<sup>7</sup>

#### a. Interviews

In a **Recorded Statement** to IPRA on July 22, 2016, independent witness **Civilian 3** stated that she and her husband, Civilian 4 (husband), were returning home from dinner when she saw and heard two teenage girls yelling for the police. Civilian 3 stated that a bicycle police officer came towards the two girls and overheard them tell the officer, “there was a guy in the park”, but did not hear what else was told to the officers.

Civilian 3 stated that as she and her husband approached the park, they observed a man (Subject 1) sitting on the bench located at the back of the park. Civilian 3 stated that the officer that spoke to the two females was joined by two other bicycle officers who formed a semi-circle around the male sitting on the bench, and standing approximately five feet away. Civilian 3 stated that as the officers approached the male, he jumped up from the bench and pointed his arms at the officers<sup>8</sup>. Civilian 3 and her husband could not see specifics due to the distance from which they were standing, but heard the male say something like, “get back,” or “get away from me.” Civilian 3 stated that she and her husband saw the male pointing at the officers but did not see an object in his hand, and did not see him fire a gun.

Civilian 3 stated that noises that sounded like firecrackers were heard, and flashes of light and sparks were seen. Civilian 3 stated that she and her husband saw the officers’ guns were drawn, realized it was gunfire, and took cover behind a car. Civilian 3 stated that they then heard someone say that there was an officer down. Civilian 3 stated that she and her husband stood up from behind the car, but heard a second round of gunshots two to three seconds later and remained behind the car. Civilian 3 stated that within thirty seconds to one-minute, other officers started to arrive. Civilian 3 stated that when she and her husband came from behind the car she saw officers running down the tunnel the 18<sup>th</sup> Street bridge and she directed them towards the male lying on the other side of the fence. Civilian 3 stated that she saw an officer lying on the ground and another officer on the other side of the fence pointing a gun at the man who was lying on the ground. Civilian 3 stated that she saw the man taken away on a stretcher<sup>9</sup>.

In a **Recorded Statement** to IPRA on July 23, 2016, independent witness **Civilian 4** stated that he and Civilian 3 were walking home and at 18<sup>th</sup> Street and XXXX Avenue they saw several bicycle cops in uniforms heading westbound. At that time Civilian 4 and Civilian 3 saw two females yelling for the passing officers to stop. Civilian 4 stated that he and Civilian 3 heard the females telling the officers that there was a male acting strangely. The three bicycle officers passed Civilian 4 and Civilian 3 as they rode back towards the park. Civilian 4 stated that as he and

<sup>7</sup> COPA conducted a thorough and complete investigation. The following is a summary of the material evidence gathered and relied upon in our analysis.

<sup>8</sup> In a Detective Supplementary Report (Att. 120), Civilian 3 reported seeing Subject 1’s hands together, with his arms extended out in front of him and pointing at the officers.

<sup>9</sup> Atts. 28, 95

Civilian 3 were walking away, they saw the male sitting on a bench in the back of the park and saw what he believed to be a thermos next to him. Civilian 4 stated that he and Civilian 3 were on the sidewalk and near the bend in the street. Civilian 4 described the male as white and was wearing a white or light-colored shirt and white or light-colored pants or jeans. Civilian 4 stated that there was no one standing behind the male, and that the bench is in front of a brick wall and an iron fence. Civilian 4 stated that he and Civilian 3 heard yelling before the gunfire but it was not clear who was yelling and what was being said. Civilian 4 stated that he saw that the male was also pointing at the officers but did not see him holding anything. Civilian 4 stated that as he and Civilian 3 looked over, they saw at least one of the officers with what he thought to be a Taser, and the officer standing on the far left was pointing something at the male; then they heard gunfire.

Civilian 4 stated that he and Civilian 3 ducked behind a parked car. Civilian 4 stated that he heard numerous gunshots, a short pause, and then a few more gunshots. Civilian 4 stated that he was only able to take quick glances at the incident and saw the officers scrambling around, and one officer scrambling backwards. Civilian 4 stated that he and Civilian 3 stood up and then another round of gunfire started at which time they ducked back down. Civilian 4 stated that Civilian 3 heard one officer yell into the radio that an officer had been shot. Civilian 4 stated that he and Civilian 3 stood up and saw an officer lying on the ground with another officer tending to him. Civilian 4 stated that the male was on the other side of the iron fence and the third officer was standing over him. Civilian 4 stated that he and Civilian 3 walked up to the officer on the ground and asked if he needed help, and saw that there was a tourniquet applied. Civilian 4 stated that he believes the officer was bleeding from his left leg. Civilian 4 stated that within sixty to one hundred and twenty seconds, dozens of officers arrived in vehicles and on bicycles. Civilian 4 stated that there was no ambulance there and saw multiple officers pick up the officer on the ground and run him to a marked Ford SUV. Civilian 4 stated that the weather was clear but it began to rain later in the night. Civilian 4 stated that he and Civilian 3 saw several officers running towards the path leading to the lake and directed them to the male on the other side of the fence. Civilian 4 stated that he and Civilian 3 told a female police Captain what they saw, and then were questioned by two detectives. Civilian 4 stated that an ambulance did arrive and the male was wheeled into the back on a gurney<sup>10</sup>.

In a **Recorded Statement** to IPRA on July 23, 2016, independent witness **Civilian 1** stated that she and her friend, Civilian 2, were in the dog park on July 21, 2016 with their dogs. Civilian 1 stated that they had been there since about 7 p.m. and saw other ladies with their dogs, three girls that appeared eight or nine years old playing soccer in the field, and a man on the bench behind them drinking beer. Civilian 1 stated that the man had a dark complexion, and she told the officers on the bikes that she thought the male was Hispanic. Civilian 1 stated that the male was wearing jeans, a gray-blue shirt, and had a black cooler or backpack. Civilian 1 stated that that the male was pouring beer out of the cans, and lining up the cans on the bench and smashing them. Civilian 1 stated that the male was drinking and watching her and the girls for the duration that she was in

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<sup>10</sup> Atts. 37, 98

the park. Civilian 1 stated that she and Civilian 2 told the girls that they should leave because they were leaving. Civilian 1 stated that the girls left the park and she and Civilian 2 watched them walk home. Civilian 1 stated that their dogs' leashes were lying by the man by the bench and as she was getting her leash the man asked, "are you ladies takin' off already?" or, "are you guys leaving this soon?" or something similar. Civilian 1 stated that they did not respond to him and left the park.

Civilian 1 stated that they walked to the end of the block and saw a police officer on bicycle. Civilian 1 stated that Civilian 2 flagged down the officer and yelled, "police officer!" Civilian 1 stated that the officer turned around and she and Civilian 2 informed the officer about the man in the park that was drinking and watching her, Civilian 2, and the young girls. Civilian 1 stated that they sent the young girls home because, "he was creepy." Civilian 1 stated that two or three other officers arrived and the officers asked for a description. Civilian 1 stated that she told the officer that the male appeared Hispanic. Civilian 1 stated that she told the officers what the male was wearing and they said they would ride over and check it out. Civilian 1 and Civilian 2 crossed the street and walked westbound on 18<sup>th</sup> Street. Civilian 1 stated that they walked about a block and heard multiple gunshots. Civilian 1 stated that she told the first detective maybe five or six shots were heard, and Civilian 2 reported eight or nine. Civilian 1 stated that she and Civilian 2 ran westbound towards her car that was parked on XXXXXX Avenue. Civilian 1 stated that Civilian 2 told her they should not leave because they reported the male to the police. Civilian 1 stated that they walked back to the corner and talked to a detective who was questioning a group of people standing on the sidewalk. Civilian 1 stated that she and Civilian 2 were interviewed later by two detectives at Civilian 2's house<sup>11</sup>.

In a **Recorded Statement** to IPRA on July 23, 2016, **Civilian 2** stated that she and her friend Civilian 1 met at the park to walk their dogs. Civilian 2 stated that there was a man in the park standing by the bench and drinking beer. Civilian 2 stated that the male was watching her and three teenage girls playing volleyball nearby. Civilian 2 stated that every time the male finished a beer he would smash the can and throw it on the bench, and was mumbling to himself. Civilian 2 stated that she and Civilian 1 were at the park about an hour and ten minutes along with the girls and the male. Civilian 2 stated that when she and Civilian 1 wanted to leave the park they decided to tell the three teen girls to leave also. Civilian 2 stated that she and Civilian 1 felt the girls should not be left alone with the male. Civilian 2 stated that she told the girls that the male had been drinking the whole time and she did not think they should be alone with him. Civilian 2 stated that the girls lived nearby. Civilian 2 stated that as she, Civilian 1, and the girls were leaving, the male called out to them and said, "oh y'all ladies aren't getting ready to leave, now are you?"

Civilian 2 stated that she followed the girls to make sure they left the park. Civilian 2 stated that she told Civilian 1 that they should tell the police about the male. Civilian 2 stated that she and Civilian 1 walked to a squad car that was parked on XXXXX Avenue but found it was unoccupied. Civilian 2 stated that she saw three police officers on bicycles and called out to them. Civilian 2

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<sup>11</sup> Atts. 32, 96

stated that she informed the officers that a male was drinking in the park and described him as African American or Hispanic, dark complexion, mid-thirties and wearing a green or blue t-shirt. Civilian 2 stated that after about two minutes she heard five to eight gunshots. Civilian 2 stated that there was one shot, then a pause, then multiple shots. Civilian 2 stated that she and Civilian 1 began to run away but returned to talk to the police. Civilian 2 stated that at the time of the shooting the weather was clear and humid, but it began to rain afterwards. Civilian 2 stated that there were other people in the park but she does not know all of them. Civilian 2 stated that she spoke to "Civilian 5"<sup>12</sup> who stated she saw the man drinking in the park and heard the gunshots, but never saw him before and that she did not call the police. Civilian 2 stated that her dog approached the man several times and may have seen him speaking on the phone and saw a bag on the bench. Civilian 2 stated that she did not see the man with a gun or any other weapon. Civilian 2 stated that she spoke to the police that were at the park after the shooting, and again to detectives at her apartment<sup>13</sup>.

In a **Recorded Statement** to IPRA on October 12, 2016, **Officer A** stated that his team was assigned to a concert venue at XXXXXX which was cancelled due to approaching weather. He stated that the team was told by their Sergeant to return to the station. Officer A stated that he is familiar with the area and patrols there daily. Officer A stated that he was working with several partners that day including Officers D, E, F, G, B, C and Sergeant A. Officer A stated that he was in uniform and riding a marked Chicago Police bicycle. Officer A stated that he was carrying a Sig Sauer P226, 9MM, double action only, that was fully loaded with fifteen rounds in the magazine, and one round in the chamber. Officer A stated that he was wearing an approved holster located on his right side, and carrying pepper-spray.

Officer A stated that he and his teammates were riding westbound over the bridge from Soldier Field onto XXXXXX and 18<sup>th</sup> Streets and he was the last to cross over. Officer A stated that when he caught up with Officer B, he saw Officer C speaking with two females on the corner of XXXXXX and 18<sup>th</sup> Street but did not hear the conversation. Officer A stated that Officer C told him that he and Officer B needed to go back to the park and check on somebody. Officer A stated that he asked Officer C who they were looking for, and Officer C replied that the ladies said there was a male Latino subject who was bothering people, including two young girls.

Officer A stated that they encountered a light-skinned African American subject (Subject 1) who picked up a phone as they approached him. Officer A stated that he and the other officers formed a triangle around Subject 1, and told him to put the phone down. Officer A stated that as he, Officer B and Officer C approached, they repeated the order to put down the phone. Officer A stated that Subject 1 put the phone into a bag or a box and reached over the bag with his right hand and drew a weapon. Officer A described the weapon as a black semi-automatic pistol.

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<sup>12</sup> Civilian 5 was not interviewed by IPRA but gave a brief statement to Detective A reporting that she saw Subject 1 drinking in the park, which is documented on page 14 of the Detective Supplementary Report. (Att. 120)

<sup>13</sup> Atts. 36, 97

Officer A stated that Subject 1 then squatted down and in a sweeping motion, pointed the weapon at him and the other officers, then pointed the weapon at Officer B and fired. Officer A stated that he and Officer C returned fire. Officer A stated that he fired two to four times, and saw the other officers returning fire. Officer A stated that Subject 1 leapt over the fence and landed on his shoulder. Officer A stated that he and Officer C went over the fence and he heard Subject 1 say, "mother fuckers, mother fuckers," as he was trying to get up. Officer A stated that Officer B was lying on the ground and Officer C returned to help him. Officer A stated that he saw Subject 1 move his right arm and saw his right hand and the butt of the pistol. Officer A stated that Subject 1 was holding the gun as he was trying to get up. Officer A stated that he fired once towards Subject 1 to terminate the threat.

Officer A stated that he heard someone behind him say, "I got you, I got you [Officer A]," and he was joined by Officer E. Officer A stated that he holstered his weapon and handcuffed Subject 1's right hand to either the belt loop or belt. Officer A stated that he flipped Subject 1 over, saw the weapon, and kicked it a few feet away fearing that Subject 1 would pick it up. Officer A stated that Officer E said he "had" the gun because they needed to preserve the scene. Officer A stated that other officers began to arrive. Officer A stated that when his weapon was examined by the evidence technician, it contained eleven rounds<sup>14</sup>.

In a **Recorded Statement** to IPRA on October 13, 2016, **Officer B** stated that his team was assigned to a concert on XXXXXXXX. Officer B stated that his team consisted of seven officers and one sergeant, including Officers C, A, G, E, D, F, himself and Sergeant A<sup>15</sup>. Officer B stated that he was in uniform and riding a marked Chicago Police bicycle. Officer B stated that he was carrying a Glock .40 caliber pistol, which was fully loaded with authorized ammunition. Officer B stated that he was wearing an approved holster located on his right side, and carrying a baton.

Officer B stated that Officer C was flagged down by an unknown citizen who stated there was a male in the park acting strangely, looking at young girls, and drinking. Officer B stated that as they met at 18<sup>th</sup> Street and XXXXXX, Officer C said they needed to go back to the park and talk the subject described by the citizen. Officer B stated that they rode east on 18<sup>th</sup> Street towards XXXXXX Avenue.

Officer B stated that the park was dark and rain was approaching. Officer B stated that they split up and converged on the male (Subject 1) in the corner of the park. Officer B stated that they positioned their bicycles in front of them as they were trained to do, and formed a semi-circle approximately five feet from Subject 1. Officer B stated that Subject 1 quickly got on the phone and began speaking to someone. Officer B stated he asked Subject 1 to get off the phone so they could speak with him. Officer B stated that he told Subject 1 to get off the phone twice, at which point Subject 1 went into a bag and retrieved a gun<sup>16</sup>.

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<sup>14</sup> Atts. 110, 111

<sup>15</sup> Officer B stated he often works with Officer A and Officer C.

<sup>16</sup> Officer B stated that he did not recall if Subject 1 dropped the phone or put it in his pocket.

Officer B stated that he ordered Subject 1 to drop the gun twice. Officer B stated that Subject 1 “fanned” the gun around once, then back around and shot him in the left leg. Officer B stated that he fell to the ground on his left knee and he and the other officers returned fire. Officer B stated that he did not recall how many times he fired his weapon, but his Tactical Response Report (“TRR”)<sup>17</sup> reflects he fired nine times. Officer B stated that Officer C came to help him and they used a belt as a tourniquet to stop the bleeding. Officer B stated that he saw Officer A on the other side of the fence holding Subject 1 at gunpoint. Officer B stated that he notified OEMC of the shots fired and requested an ambulance. Officer B stated that the rest of his team returned to the park. Officer B stated that he remained on the ground and waited for assistance<sup>18</sup>.

In a **Recorded Statement** to IPRA on August 22, 2016, **Officer C** stated that he was assigned to a bicycle team and working with Officers B and A. Officer C stated that he was in uniform, riding a marked police bicycle, and carrying a Sig Sauer 9mm handgun. Officer C stated that the concert they were patrolling was cancelled due to weather concerns and he and the other officers were travelling west bound on 18<sup>th</sup> Street and Calumet Avenue. Officer C stated that it was overcast and a storm was approaching.

Officer C stated that he was approached by two women who informed him of a man drinking in the park, who had made them feel uncomfortable. Officer C stated that the two women also said there were young girls playing nearby but the women told them to go home. Officer C stated that he and Officers B and A headed to the park and saw the male (Subject 1) place an unknown beverage inside a cooler and immediately put a phone to his ear. Officer C stated that he and the other officers placed their bicycles between them and Subject 1. Officer C stated that he told the subject to get off the phone. Officer C stated that Subject 1 asked the officers, “what’s going on?” several times and took several steps away. Officer C stated that Subject 1 reached into the small of his back and produced a black handgun.

Officer C stated that he began to backpedal and drew his weapon. Officer C stated that he ordered Subject 1 to drop his gun. Officer C stated that Subject 1 said something unintelligible and swept the gun back and forth between him and the other officers. Officer C stated that Subject 1 pointed the handgun at Officer B and he heard a shot and saw Officer B fall to the ground. Officer C stated that he returned fire and Subject 1 turned and ran towards the wall and fence. Officer C stated that he and Officer A gave chase and saw Subject 1 jump the fence and land face down with his hands underneath him. Officer C stated that he heard Officer B on the radio, reporting shots fired at and by the police; he then requested an ambulance for Subject 1 and Officer B. Officer C stated that he asked Officer A if he had Subject 1 covered and returned to assist Officer B. Officer C stated that Officer B was bleeding from the left thigh and he used his belt as a tourniquet.

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<sup>17</sup> Att. 7

<sup>18</sup> Atts. 113, 114

Officer C stated that he heard a single gunshot when he was assisting Officer B<sup>19</sup>. Officer C stated that other officers started to arrive and a Sergeant used an actual tourniquet on Officer B's leg. Officer C stated that Officer B was picked up by four officers and placed in a squad car and transported to the hospital. Officer C stated that he returned to Officer A on the other side of the fence and observed that Subject 1 was turned onto his back and handcuffed, and there was another officer standing over a weapon approximately two feet away. Officer C stated that he did not see who turned Subject 1 over or handcuffed him<sup>20</sup>.

#### b. Digital Evidence

**OEMC Transmissions** for Zone XX recorded the radio traffic for the XXX District. The incident begins at 3:20 minutes into the recording and an officer states that shots were fired by and at the police, and that an officer was shot<sup>21</sup>.

**CPD Crime Scene Photographs** documented the crime scene, recovered weapon and live round with indentation in the primer, Subject 1's personal property on and near the bench, and other collected evidence<sup>22</sup>.

#### c. Physical Evidence

A **Postmortem Report** signed by Doctor 1 on October 1, 2016, documented the autopsy and toxicology of Subject 1 performed on July 22, 2016. The report further documented that Subject 1 sustained 9 (nine) gunshot wounds and six (6) bullets or fragments were recovered, and alcohol was present in his system<sup>23</sup>.

An **Illinois State Police Forensic Report** documented the examinations of the fired evidence collected from Subject 1's remains and the crime scene, the officer's weapons, and the recovered weapon (Exhibit #20)<sup>24</sup>.

**XXXXXX Hospital Medical Records** documented that Officer B sustained two (2) gunshot wounds (indicative of a through and through) to the left lateral (outer) thigh, and left medial (inner) thigh<sup>25</sup>.

An **Illinois State Police Forensic Report** documented that an examination of the recovered weapon (Exhibit #20), its magazine, and a live cartridge did not reveal any latent impressions that were suitable for comparison<sup>26</sup>.

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<sup>19</sup> The source of the gunshot was not expounded upon during the interview.

<sup>20</sup> Atts. 89, 94

<sup>21</sup> Att. 64

<sup>22</sup> Att. 67

<sup>23</sup> Att. 102

<sup>24</sup> Att. 106

<sup>25</sup> Att. 107, 108

<sup>26</sup> Att. 115

An **Illinois State Police Forensic Report** documented the analysis of the gunshot residue collection kit which concluded that Subject 1 may not have discharged a firearm, and further states that if Subject 1 did discharge a firearm, then the particles were removed by activity, were not deposited, or not detected by the procedure<sup>27</sup>.

An **ATF Firearms Trace Summary** documented that the firearm recovered from Subject 1 was made prior to the marking and record-keeping requirements the Gun Control Act of 1968 and contained no ownership information, purchase or transfer history<sup>28</sup>.

#### d. Documentary Evidence

The following reports were obtained by IPRA/COPA and are summarized to reflect the observations that were most relevant to the investigation.

An **Original Case Incident Report** under RD #XXXXXXX completed by Officer H #XXXXX, documented the officers' response to Officer B being shot and transported to XXXXX Hospital via Beat XXXXX, and Subject 1 being transported to XXXXX Hospital via CFD Ambulance #XX. The report also documents both Officer B and Subject 1 were treated by Doctor 2<sup>29</sup>.

A **Tactical Response Report** signed by Officer B documented Subject 1 pointed and fired a weapon at Officer B striking him in the left leg, placing Officer B in fear for his life and the lives of Officers C and A, and in response, Officer B discharged his firearm nine times at Subject 1<sup>30</sup>.

An **Officer's Battery Report** signed by Officer B documented that the officer received a major injury after being shot by a firearm<sup>31</sup>.

A **Tactical Response Report** signed by Officer A documented Subject 1 pointed and fired a weapon at Officer B striking him in the leg, placing Officer A in fear for his life and the lives of Officers B and C, to which Officer A discharged his weapon three times at Subject 1<sup>32</sup>.

An **Officer's Battery Report** signed by Officer A documented the officer was not injured and was shot at with a firearm<sup>33</sup>.

A **Tactical Response Report** signed by Officer C documented Subject 1 pointed and fired a weapon at Officer B striking him in the leg, placing Officer C in fear for his life and the lives of Officers B and A, to which Officer C discharged his firearm nine times at Subject 1<sup>34</sup>.

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<sup>27</sup> Att. 116

<sup>28</sup> Att. 125

<sup>29</sup> Att. 5

<sup>30</sup> Att. 7

<sup>31</sup> Att. 8

<sup>32</sup> Att. 9

<sup>33</sup> Att. 10

<sup>34</sup> Att. 11

An **Officer's Battery Report** signed by Officer C documented the officer was not injured and was shot at with a firearm<sup>35</sup>.

A report detailing the **Processing of the Recovered Weapon** documented that a live round was recovered from the weapon's chamber and that there was an indentation in the primer of the cartridge consistent with being struck with a firing pin<sup>36</sup>.

A **Crime Scene Processing Report** #XXXXXX, dated July 22, 2016, documented additional expended shells collected at the crime scene the day after the incident<sup>37</sup>.

A **Crime Scene Processing Report** #XXXXXX, dated July 21, 2016, documented a gunshot residue test performed on Subject 1 at 9:18 p.m. The report further documented photographs of Subject 1 and the police vehicle that transported Officer B to the hospital<sup>38</sup>.

A **Crime Scene Processing Report** #XXXXXX, dated July 21, 2016, documented the physical and photographic evidence collected at the crime scene, including the recovered weapon<sup>39</sup>.

**Property Inventory** receipts documented the inventory of evidence and Subject 1's personal property recovered from the scene<sup>40</sup>.

A **Detective Supplementary Report** documented the initial information received from the medical examiner stating that Subject 1 had seven (7) gunshot wounds and that four (4) projectiles were recovered<sup>41</sup>.

A **Property Inventory** receipt #13732819 documented the inventory of the recovered weapon, a magazine containing live cartridges, and one (1) additional live cartridge<sup>42</sup>.

A **Detective Supplementary Report** documented the conditions of the crime scene, inventories of physical evidence, and initial statements of the involved officers and witnesses discovered in the Detective's canvass<sup>43</sup>.

#### IV. ANALYSIS

##### Legal Standard

The applicable Chicago Police Department order is General Order 03-02-03, II, which states as follows:

“A sworn member is justified in using force likely to cause death or great bodily

<sup>35</sup> Att. 12

<sup>36</sup> Att. 16

<sup>37</sup> Att. 71

<sup>38</sup> Att. 73

<sup>39</sup> Att. 75

<sup>40</sup> Att. 87

<sup>41</sup> Att. 117

<sup>42</sup> Att. 119

<sup>43</sup> Att. 120

harm only when he or she reasonably believes that such force is necessary:

1. to prevent death or great bodily harm to the sworn member or to another person, or
2. to prevent an arrest from being defeated by resistance or escape and the sworn member reasonably believes that the person to be arrested:
  - a. has committed or has attempted to commit a forcible felony which involves the infliction, threatened infliction, or threatened use of physical force likely to cause death or great bodily harm or;
  - b. is attempting to escape by use of deadly weapon or;
  - c. otherwise indicates that he or she will endanger human life or inflict great bodily harm unless arrested without delay.”

In addition, the use of deadly force is codified under section 7-5 of the Criminal Code of 2012 (720 ILCS 5/7-5 (West 2012)). The pertinent part of that statue states that:

“[a] peace officer \*\*\* need not retreat or desist from efforts to make a lawful arrest because of resistance or threatened resistance to the arrest. He is justified in the use of any force which he reasonably believes to be necessary to effect the arrest and of any force which he reasonably believes to be necessary to defend himself or another from bodily harm while making the arrest. However, he is justified in using force likely to cause death or great bodily harm only when he reasonably believes that such force is necessary to prevent death or great bodily harm to himself or such other person.” 720 ILCS 5/7-5 (West 2012).

Finally, an officer’s use of deadly force is a seizure within the meaning of the Fourth Amendment and, therefore, must be reasonable. *Muhammed v. City of Chicago*, 316 F.3d 680, 683 (7th Cir. 2002). “The ‘reasonableness’ inquiry in an excessive force case is an objective one: the question is whether the officers’ actions are ‘objectively reasonable’ in light of the facts and circumstances confronting them, without regard to their underlying intent or motivation.” *Graham v. Connor*, 490 U.S. 386, 397 (1989); see also *Estate of Phillips v. City of Milwaukee*, 123 F.3d 586, 592 (7th Cir. 2003). The reasonableness calculation “must embody allowance for the fact that police officers are often forced to make split-second judgments—in circumstances that are tense, uncertain, and rapidly evolving—about the amount of force that is necessary in a particular situation.” *Graham*, at 396–97. Consequently, “when an officer believes that a suspect’s actions [place] him, his partner, or those in the immediate vicinity in imminent danger of death or serious bodily injury, the officer can reasonably exercise the use of deadly force.” *Muhammed*, 316 F.3d at 683 (quoting *Sherrod v. Berry*, 856 F.2d 802, 805 (7th Cir.1988) (en banc) and omitting emphasis).

#### Factual Determination

To determine whether a reasonable officer in Officers A, B, and C’s position would have believed the use of deadly force was necessary, factual determinations using a preponderance of the

evidence standard were made. A proposition is proved by a preponderance of the evidence when it is found to be more probably true than not. *Avery v. State Farm Mutual Automobile Insurance Co.*, 216 Ill. 2d 100, 191 (2005).

Based upon the investigation, the following facts have been established: Subject 1 possessed a firearm, it is more likely than not that Subject 1 shot Officer B, Subject 1 attempted to escape and remained a threat to Officer A, and the officers made credible statements consistent with and corroborated by the independent evidence.

*A. Subject 1 possessed a firearm*

It is more likely than not that Subject 1 possessed a firearm. The involved officer statements were consistent in that each officer saw Subject 1 produce a hand gun and point the hand gun at the officers. After the officers fired at Subject 1, Officer A pursued Subject 1 as he fled. While attempting to apprehend Subject 1, Officer A saw the gun a second time. Officer A stated that after Subject 1 jumped the fence, he saw Subject 1, while on the ground, move his right arm and saw Subject 1's right hand and the butt of the pistol. Officer A stated that Subject 1 was holding the gun as he was trying to get up. Although there were no other eye-witnesses that place the gun in the hand of Subject 1, independent witnesses Civilian 3 and Civilian 4 saw Subject 1 jump up from the bench and yell as he engaged in a pointing motion towards the officers while he was being confronted.<sup>44</sup>

In addition, a firearm was recovered at the scene.<sup>45</sup> While there is a lack of forensic evidence that ties the handgun to Subject 1, according to the crime scene processing reports, photographs, and detective supplementary reports, heavy rain was present during processing.<sup>46</sup> The type of forensic evidence collected from the hand gun may have been affected by these weather conditions. The weapon was also examined for latent prints and Subject 1's hands were swabbed for gunshot residue, neither examination linked Subject 1 to the weapon.<sup>47</sup> Again, the weather conditions in addition to the delay of collection of the evidence could have affected these results – as may have any medical intervention provided to Subject 1.<sup>48</sup> The involved officers' statements are credible and consistent and based on the totality of the circumstances, it is more likely than not that Subject 1 possessed a firearm.

*B. Subject 1 committed a forcible felony when he shot Officer B*

It is more likely than not Subject 1 shot Officer B. Based on the involved officers' statements, Subject 1 rose from the bench, produced a black handgun either from a bag or his person, swept

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<sup>44</sup> Atts. 28, 37, 95, 98, 120.

<sup>45</sup> Atts. 16, 67, 75.

<sup>46</sup> Atts. 67, 73, 75, 120.

<sup>47</sup> No suitable prints were found on the weapon, and the gunshot residue test was inconclusive. (Atts. 115, 116).

<sup>48</sup> The gunshot residue test was performed at the hospital approximately one hour after the incident. (Att. 73).

the handgun between the officers, and then fired a shot that struck Officer B in the left thigh<sup>49</sup>. Officers A and B stated that Subject 1 fired the shot; Officer C stated that he saw Subject 1 point the handgun at Officer B, heard a shot, and saw Officer B fall to the ground. The OEMC transmission, which was made close in time to the event, also corroborates that the involved officers believed Subject 1 had shot Officer B. The call went out as “shots fired at the police and by the police” and “officer hit.... officer shot.”<sup>50</sup> Although it is not clear which involved officer made the call, the report of “shots fired at the police” and “officer hit” are consistent with each involved officer’s statement that Subject 1 had fired in the direction of the officers. In addition, independent witnesses saw Subject 1 jump up from the bench with his hands together and extended towards the officers.

According to the medical records, Officer B was treated for a through-and-through gunshot wound to the left thigh.<sup>51</sup> In addition, the weapon recovered from Subject 1 was deemed operable and was test fired during the examination by the Illinois State Police lab.<sup>52</sup> Although no forensic evidence was discovered linking Officer B’s gunshot wound to the recovered weapon, the number of shots that were reported to have been fired by the officers and the number of bullets, fragments, and shell casings that were submitted to the Illinois State Police laboratory is inconsistent. This indicates that not all the evidence was discovered at the scene. There were twenty-two shots reported to have been fired by the officers and one shot fired by the offender. Only eighteen shell casings recovered; there were six rounds and fragments recovered from Subject 1’s body and a second canvass was performed the next morning with additional shell casings discovered.<sup>53</sup> The onset of severe weather during the processing of the scene, combined with the environment in which this event occurred, are factors that may have reasonably contributed to difficulty in locating and retrieving all of the evidence in this matter.

#### C. *Subject 1 posed an imminent threat of death or great bodily harm to the officers*

Having set forth the circumstances surrounding Officers B, A, and C’s firing of their weapons, we turn to whether the first use of deadly force was necessary to prevent death or great bodily harm and was objectively reasonable under the circumstances.

In his statement to IRPA, Officer A said that Subject 1 had a firearm in his hand and made a sweeping motion in which he pointed the gun at each involved officer. Officer A said that Subject 1 pointed the gun again at Officer B and fired one shot. Officer A specifically stated that he saw Subject 1 fire the shot that hit Officer B. It was not until Subject 1 fired that Officer A drew his weapon and returned fire. Similarly, in his IPRA statement, Officer C described Subject 1 as pointing the gun in a sweeping motion. Officer C stated that as he soon as he saw the firearm, he gave commands for Subject 1 to drop the gun and retreated to create space. Officer C did not fire

<sup>49</sup> Atts. 110, 111, 113, 114, 89, 94.

<sup>50</sup> Att. 64.

<sup>51</sup> Atts. 107, 108.

<sup>52</sup> Att. 106.

<sup>53</sup> *Id.*

his weapon until after Subject 1 shot Officer B. Finally, Officer B gave a similar version of events in his IPRA statement. Officer B described Subject 1 as holding the gun with two hands and pointing the gun in a circular motion. Officer B also states that Subject 1 was given commands to drop the gun before the involved officers fired their weapons.

A reasonable officer in the involved officers' position would certainly believe that deadly force was necessary to prevent death or great bodily harm. First, each officer saw a gun in Subject 1's hand. Not only was Subject 1 visibly in possession of a hand gun, he pointed the gun multiple times at the officers. Second, it has been determined that it is more likely than not that Subject 1 shot Officer B. Despite having justification to use deadly force as soon as Subject 1 pointed the firearm in their direction, the officers did not fire immediately. (*See, e.g., See Bell v. Crow*, 321 F. 3d 637, 639 (7th Cir. 2003) (if a suspect threatens an officer with a weapon, the risk of serious physical harm has been established such that the officer police may use deadly force). Instead, verbal commands were given to Subject 1 to drop the gun. Further, Officer C stated that he actively retreated to create distance. It was not until Subject 1 fired his weapon, that the officers returned fire.

In sum, based on the totality of the facts and circumstances, an officer with similar training and experience as Officers A, C, and B would reasonably believe that Subject 1 posed an immediate threat to their lives. Therefore, their use of deadly force was objectively reasonable under the circumstances.

#### *D. Subject 1 attempted to escape and remained a threat to Officer A*

Officer A's continued belief that the use of deadly force was necessary to prevent death or great bodily harm was objectively reasonable under the circumstances. It is more likely than not that Subject 1 continued to possess the handgun as he attempted to escape. Based on the involved officers' statements, Subject 1 ran and climbed the fence located in the rear of the park. The fact that Subject 1 attempted to flee was corroborated by independent witnesses who saw Subject 1 on the other side of the fence.<sup>54</sup>

Officer A reasonably believed that Subject 1 remained a threat to himself and to other persons even though he attempted to flee. Officer A stated that Subject 1 was holding the handgun as he lay on the ground and the handgun was recovered near Subject 1's body. This is also corroborated in the crime scene reports and the evidence technician photographs that show the weapon near crime scene.<sup>55</sup> According to Officer A's statement, Subject 1 was moving, attempting to get up, and still possessed the gun. Because it is more likely than not that Subject 1 had just shot Officer B, and continued to act in an aggressive manner, it was reasonable for Officer A to believe that Subject 1 remained a threat. Because of Subject 1's previous actions and the fact that Officer A saw a gun in Subject 1's hands, it was reasonable to believe that Subject 1 remained a continued

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<sup>54</sup> Atts. 28, 37, 95, 98, 120.

<sup>55</sup> Atts. 16, 67, 75.

threat. It is also important to note that a live round that was recovered from Subject 1's weapon and the round had been struck with a firing pin.<sup>56</sup> Based on the physical evidence, it could be reasonably concluded that Subject 1 attempted to fire his weapon at least a second time towards the officers. Under these circumstances, a reasonable officer in Officer A's position would believe that the second use of deadly force was necessary to prevent death or great bodily harm and therefore Officer A's second use of deadly force was objectively reasonable under the circumstances.

#### **V. CONCLUSION**

Based on the analysis set forth above and the totality of the circumstances, COPA finds that Officer A, B, and C's use of deadly force was objectively reasonable and therefore within policy as defined by General Order 03-02-03, II; the relevant Illinois state statute; and the Fourth Amendment. The evidence establishes that the involved officers reasonably believed that Subject 1 posed an imminent and deadly threat and that the officers' beliefs were objectively reasonable under the circumstances.

Approved:

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*Deputy Chief Administrator – Chief Investigator*

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Date

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<sup>56</sup> Atts. 16, 67.

**Appendix A**

Assigned Investigative Staff

<b>Squad#:</b>	
<b>Investigator:</b>	
<b>Supervising Investigator:</b>	
<b>Deputy Chief Administrator:</b>	
<b>Attorney:</b>	